BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0371E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR AN ORDER APPROVING EXPENSES RECOVERED THROUGH THE ENERGY COST ADJUSTMENT AND PURCHASED CAPACITY COST ADJUSTMENT IN 2023.

UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

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I. INTRODUCTION AND BACKGROUND

This Unanimous Comprehensive Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy ("Black Hills" or the "Company"), Trial Staff of the Commission ("Staff"), and the Office of the Utility Consumer Advocate ("UCA") (each a "Settling Party" and collectively the "Settling Parties"), pursuant to Rule 1408 of the Colorado Public Utilities Commission's ("Commission") Rules of Practice and Procedure, 4 CCR 723-1.

On August 30, 2024, Black Hills filed an Application for an Order approving expenses recovered through the Energy Cost Adjustment and Purchased Capacity Cost Adjustment in 2023 (Application"). The Colorado Office of the Utility Consumer Advocate ("UCA") and Trial Staff of the Colorado Public Utilities Commission ("Trial Staff") timely intervened of right. The matter was referred by minute entry to an Administrative Law Judge for resolution,

With its Application Black filed the Direct Testimonies of Jennifer Bass, Andy Butcher, Kent Kopetsky, and Jeremy Retzlaff. On January 24, 2025, Trial Staff filed the Answer Testimonies of Erin O'Neill and Dr. Nick Bongiardina. UCA did not file any testimony in this proceeding. On February 21, 2025, Black Hills filed the Rebuttal Testimonies of Jennifer Bass and Jeremy Retzlaff.

By Decision No. R25-0185-I the procedural schedule in this proceeding was extended to allow time for the Commission to issue a decision in the rate case of Black Hills, in Proceeding No. 24AL-0275E, on an issue related to the instant proceeding. Specifically, in the rate case Trial Staff raised a concern regarding the return the Company is applying to the Deferred Tax Asset ("DTA") associated with Peak View Wind Facility ("Peak View"), a 60 MW Company-owned generation facility approved in the Company's 2013 Electric Resource Plan ("ERP"). BHCOE

collects avoided costs of Peak View through the energy cost adjustment ("ECA") and transmission cost adjustment ("TCA"), with incremental costs above the avoided cost charged to the renewable energy standard adjustment ("RESA"). Although the Peak View project generates Production Tax Credits ("PTCs"), the PTCs have not actually been used, so a DTA of approximately $40 million was created. Beginning in 2018 the Company applied a weighted average cost of capital ("WACC") return on DTA included in recovery in the ECA and RESA. Although the Company contended it has been transparent about the DTA in its RES reports, Staff contended that its review of the RES reports was only to evaluate compliance with RES requirements and did not constitute Commission approval of a WACC return on the DTA. On March 17, 2025, the Commission issued Decision No. C25-0183, which held as follows:

> [W]e find it is inappropriate for the Company to earn its WACC on the DTAs for the Peak View facility. While we decline to require a compliance filing in this Proceeding as requested by Staff, we order that BHCOE shall not charge its WACC on the DTAs for the Peak View facility in future years, and provide this policy guidance to the ALJ presiding over Proceeding No. 24A-0371E for implementation there as appropriate.[1]

This Settlement Agreement is intended to resolve the DTA issue described above as well as all issues which were or could have been raised by the Settling Parties in this Proceeding with respect to the Company's Application for approval of expenses recovered through the Energy Cost Adjustment and Purchased Capacity Cost Adjustment.

II. SETTLEMENT TERMS

The Settling Parties agree that the Commission should approve the Company's Application, subject to the following modifications and conditions:

[1] See Decision No. C25-0183 at ¶¶ 290 – 296.

A. Future Filing Recommendations

1. Black Hills agrees to all of Staff's proposed filing recommendations to the annual ECA and PCCA Prudency Reviews going forward. Specifically, the Company agrees to provide annually:
    a. Unit-level monthly and annual equivalent availability factor calculations in executable format;
    b. Complete set of available GADS event records, including outage and derate events for the relevant year in executable format where available;
    c. Monthly and annual calculation of the revenue requirement for Company-owned facilities in the ECA or PCCA in an executable format;
    d. An analysis explaining any significant changes in the ECA and PCCA compared to the previous filing year in the ECA and PCCA overview attachment that the Company files along with its application in the ECA and PCCA Prudency Review proceedings; and
    e. An update on efforts to reduce repair delays for the Peak View wind facility.

2. Black Hills agrees to provide the following additional information in its Quarterly ECA Advice Letters going forward:
    a. A comparison of actual and forecasted fuel prices for the relevant quarter; and
    b. All workpapers in executable format.

B. Corrections to the 2023 Peak View Revenue Requirement

1. The Company agrees that the 2023 Annual RES Compliance Report contained the incorrect PPA benchmark, which should have been reported as year seven ($49.98/MWh) but was inadvertently reported as year eight ($50.20/MWh).[2]

2. The Company identified that the 2023 Peak View Revenue Requirement used an incorrect income tax rate, and this rate has been corrected.[3]

3. The Company inadvertently removed all ancillary service cost from the 2023 Peak View Revenue Requirement. The Company has added costs related to Schedule 3 Regulation and Frequency Response Service in the Settlement Peak View Revenue Requirement – Hearing Exhibit 107, Attachment 1.[4]

[2] Rebuttal Testimony of Company Witness Bass, HE105, page 13:15-18.
[3] Rebuttal Testimony of Company Witness Bass, HE105, page 14:16-20 – page 15: 1-2.
[4] Rebuttal Testimony of Company Witness Bass, HE105, page 13:18-21 – page 14:1-2.

4. The Company inadvertently normalized the PTCs twice, this has been corrected in the Settlement Peak View Revenue Requirement - Hearing Exhibit 107, Attachment 1.[5]

5. The Company agrees to reflect the Peak View Deferred Tax Asset ("DTA") amount at the December 31, 2022 balance of $31,703,866 for 2023.[6] See Section C for additional provisions on the Peak View DTA.

6. The Company will update the 2023 Annual RES compliance report with this corrected information. The Company will ensure that the 2024 Annual RES compliance report does not replicate these errors.

C. Peak View Deferred Tax Asset

1. Pursuant to Decision No. C25-0183, paragraph 296, the Commission stated "BHCOE shall not charge its WACC on the DTAs for the Peak View facility in future years, and provides this policy guidance to the ALJ presiding over Proceeding No. 24A-0371E for implementation there as appropriate."

2. The Parties agree BHCOE shall not earn WACC on the Peak View DTA beginning January 1, 2023 and going forward. Certain provisions of the Peak View CPCN Settlement Agreement in Proceeding No. C15-0502E, approved by the Commission in Decision No. C15-1182, expire on December 31, 2026. Black Hills will make a filing in 2026 to address future cost recovery of the Peak View Wind Facility, at which time the annual revenue requirement calculation (including DTA recovery) and the performance incentive mechanism will be reviewed by the Commission.

3. For purposes of the 2023 through 2026 ECA period, the Parties agree to allow BHCOE to recover the cost of long-term debt associated with the Peak View DTA at the approved cost of debt of 3.91% through March of 2025, consistent with the effective date of base rates in Proceeding No. 24AL-0275E. Beginning in April, 2025 a cost of debt of 4.61% may be applied for the remainder of the April through the end of 2026 period. The difference between full WACC recovery and cost of debt recovery for the period between January 2023 through March 2025 is $3,958,020 ($1,475,718 for the ECA for calendar year 2023, $2,093,693 for calendar year 2024, and $388,609 for January 2025 – March 2025, as shown in Hearing Exhibit 107, Attachment 1). The Company will apply a Settlement Credit to the ECA as discussed below.

[5] Discovery Response CPUC9-3.
[6] Discovery Response CPUC19-7, provided as Table ETO-3 in the Answer Testimony of Staff Witness O'Neill (HE 301C).

3. The Company anticipates this DTA will amortize down beginning in 2025 and ending in 2032 as shown in the Settlement Peak View Revenue Requirement-Hearing Exhibit 107, Attachment 1. The Company agrees to cap the DTA balance used for purposes of calculating the carrying costs at the projection provided in Hearing Exhibit 107, Attachment 1.

4. The Company agrees to pursue all options to sell or transfer PTCs that are generated from the Peak View Wind Facility starting in 2023. The Company agrees to report the DTA balance as part of the revenue requirement reporting pursuant to Section A of this settlement agreement.

D. Normalization Adjustments to Annual Peak View Revenue Requirement

1. The Settling Parties agree that the Company shall not normalize the PTCs as part of the wind normalization calculations.

E. Liquidated Damages

1. The Company agrees to pursue liquidated damages as appropriate, and if damages are received, the Company will pass along the O&M reductions to customers.

F. Settlement Credit

1. The Company agrees to apply the Settlement Credit ($3,958,020) as a reduction to the Peak View Revenue Requirement over an eighteen-month period beginning in July of 2025 through December 2026 as shown in Hearing Exhibit 107, Attachment 1, 2025 Revenue Requirement. The reduction in the Peak View revenue requirement will be reflected as a reduction in the total ECA balance.

G. Other Components of 2023 ECA and PCCA Expenses

1. The Settling Parties agree that all other components of the Company's 2023 actual ECA and PCCA costs were reasonable and prudently incurred to provide reliable electric service to Black Hills' customers. Parties reserve their rights to take whatever position they deem appropriate regarding all other components of the forthcoming 2024 ECA/PCCA prudence review proceeding and all subsequent ECA/PCCA prudence reviews.

III. GENERAL PROVISIONS

Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

The Settling Parties agree to support or not oppose all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would

have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this

Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 23rd day of May, 2025.

Approved on behalf of:

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